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THE DIRECTV GROUP, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE ACACIA MEDIA TECHNOLOGIES CORPORATION AND ALL RELATED AND/OR CONSOLIDATED CASE ACTIONS	Case No. C-05-01114 JW (HRL) MDL No. 1665 **DEFENDANT DIRECTV GROUP, INC.'S POST-HEARING BRIEF IN SUPPORT OF RECONSIDERATION OF THE COURT'S CONSTRUCTION OF THE TERM "TRANSCEIVER"** Hearing Date: September 8, 2005 Hearing Time: 9:00 a.m. Courtroom: 8, 4th Floor Judge: Honorable James Ware

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Defendant DIRECTV GROUP, INC. ("DIRECTV") submits this post-hearing brief in reply to Acacia's Opposition to DIRECTV's Motion for Reconsideration of the Court's Construction of the Term "Transceiver" ("Acacia's Opposition Brief"), and to Acacia's arguments made during the September 8-9, 2005 hearing for the Motion for Reconsideration of the July 2004 Claim Construction Order ("Reconsideration hearing").[1]

I. INTRODUCTION

A person of ordinary skill in the art in 1991 would understand that a transceiver is a technical term which stands for a device that sends and receives data over a single communication medium. This construction is consistent with the '702 patent specification and the dictionary definitions, and prevents the term from being misapplied in an overly broad way. It is also supported by the unrebutted testimony of Dr. Lippman. (Lippman's Transceiver Decl. at ¶¶ 19, 20 and 25).

In opposing this construction, Acacia submits no expert testimony – despite retaining two experts to testify on other claim construction issues. Rather, Acacia engages in a creative reading of the '702 patent which is contrary to the position it took in the first Markman Hearing and which requires it to redraw Figure 6 of the patent specification. Moreover, Acacia openly flaunts the fact that the existing broad definition of the term will allow it to apply the '702 patent claims to devices which are plainly not transceivers. As a result, and because the specification provides no special definition to the term, the Court should construe "transceiver" according to its ordinary meaning as submitted by DIRECTV.

II. ARGUMENT

The claim construction that most naturally aligns with the patent specification will be, in the end, the correct construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005)(*en banc)*; *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). The specification provides the technological and temporal context to enable the court to ascertain the meaning of a claim term. *Phillips*, 415 F.3d at 1314; *V-Formation, Inc. v. Benetton*

[1] Defendants Echostar Satellite LLC and Echostar Technologies Corporation join in this motion.

Group SpA, 401 F.3d 1307, 1310 (Fed. Cir. 2005). As discussed below, DIRECTV's construction aligns with the specification, while Acacia's construction is so at odds with the specification, it requires the redrawing of Figure 6.

A. Acacia's New Argument Is Fatally Flawed.

Desperate to maintain the overbroad construction of "transceiver," Acacia jettisons its prior position and spins a new 3-step argument that goes something like this. First, Acacia points to the "one-way communication process" described in the specification. This process requires reception system 200 to receive and send data over different communication media. (*See*, '702 patent at 16:34-45). Second, Acacia argues that the transceiver is the only device in reception system 200 that can send data to the transmission system. Third, Acacia concludes that the transceiver must be the device that receives and sends data over different media. This new 3-step argument, however, is flawed because the second step of the argument is plainly wrong.

1. Acacia's New Argument Is At Odds With Figure 6 Of The '702 Patent Specification.

During the prior Markman proceedings (when the dispute was whether "transceiver" should require common circuit components), Acacia argued that according to Figure 6, the transceiver must include component number 201 – the transceiver – for receiving information, and component number 207 – the user/computer interface – for transmitting information.

> Nothing in the specification or prosecution history states that the transceiver must employ common circuit components for both transmitting and receiving. Again, Figure 6 of the '702 patent shows the receiving function of the transceiver performed by one set of components (201) and *the transmitting function performed by another set of components (207)*. The construction of "transceiver" therefore cannot be limited to employing common circuit components.

(Wong Decl. Ex. 1 at 24)[2] (emphasis added). Although Acacia was wrong that the transceiver includes a transceiver and a user/computer interface, Acacia was correct in its analysis that transceiver 201 was not the only component which has a transmitting function – user/computer interface also has that function.

[2] Declaration of Charles Wong in Support of DIRECTV's Post-hearing Brief In Support Of Reconsideration Of The Court's Construction Of The Term "Transceiver" is filed herewith.

But this is directly contrary to Acacia's position today (when the dispute is whether "transceiver" sends and receives over a single medium). Acacia now asserts that the user/computer interface 207 *cannot* perform a transmitting function:

> The transceiver is the only component of the reception system that is capable of transmitting information to the transmission system. … The patent specification does not state that the "user/computer interface" is the device which transmits information to the transmission system, nor could it. (See, '702 patent, 14:28-51). An interface is merely a boundary or connection, which according to its name – *the user/computer interface* – is a boundary or connection between the user and the computer (the reception system). *An interface is incapable of transmitting information and would be incapable of transmitting information to the transmission system*. The device depicted in Figure 6 which is capable of transmitting information to the transmission system is the transceiver.

(Acacia's Opposition Brief at 7, n.7) (emphasis added).

Acacia had it right the first time. Figure 6 of the '702 patent explicitly illustrates that user/computer interface 207 sends information to the transmission system – an arrow extending from the user/computer interface 207 is marked, "TO AUDIO & VIDEO TRANSMISSION SYSTEM." This is consistent with the '702 patent specification which describes a user terminal interface that is built into the reception system to facilitate a user to communicate with the transmission system. (*See,* '702 patent 13:26-27; 14:27-33) The '702 patent also claims a user request interface as part of the communication system. (*See,* '702 patent claims 9, 10, 20, 21, 35 and 36). Thus, Figure 6 clearly discloses that a transmission to the transmission system occurs through or from the interface 207.[3]

When pressed to explain why Figure 6 does not undermine Acacia's position, its trial counsel argued that the figure should be redrawn:

> THE COURT: … If I adopt the definition that I've been asked to, which is over [a] single medium, [] that would be only a problem with respect to the cable and satellite?
>
> MR. BLOCK: It would *eliminate* embodiments, embodiments that are *covered* by the claim.

[3] Although Acacia does not presently offer its original position to the Court, that interpretation was also wrong. The '702 patent does not suggest in any way that the transceiver 201 and the interface 207 are in communication with each other.

> THE COURT: Why wouldn't the user interface device [item 207] there that is part of the [reception] system cover that?
>
> MR. BLOCK: Because that's an interface.
>
> THE COURT: It's got a line going out.
>
> MR. BLOCK: It's got a line going out.
>
> THE COURT: What is that line doing?
>
> MR. BLOCK: I think *that line should be up by the transceiver*.

(Wong Decl. Ex. 2 at 390-91) (emphasis added).

In patent law, what you see is what you get. *That line* which extends from the user/computer interface 207 is part of the '702 patent disclosure, memorialized at the time of original filing in 1991. *That line,* cannot now be moved by Acacia's trial counsel in favor of its new, self-serving claim construction.

Moreover, Acacia's protest that adopting DIRECTV's proposed definition would *eliminate* embodiments covered by the claims is baseless. Patent law does not require a claim to cover all embodiments disclosed in the specification – just the opposite, a patentee may disclose many embodiments which he may or may not claim. Also, Acacia's argument assumes its own conclusion as a premise – that the claim term "transceiver" *covers* a device that operates over different media. Acacia's reasoning is circular and offers nothing to resolve the present issue.

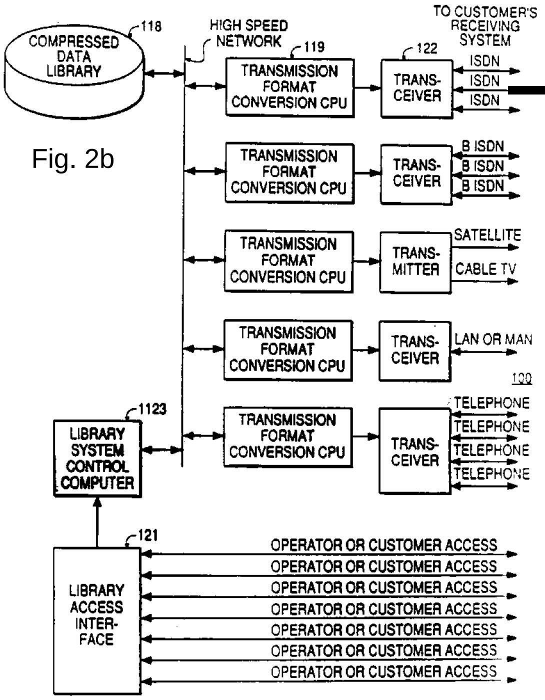
2. '702 Patent Specification Does Not Teach A Transceiver That Can Send And Receive Information Over Different Media.

Claim terms are construed according to their ordinary meaning unless the patentee clearly provides a special meaning in the specification. *Merck & Co. v. Teva Pharmaceuticals USA, Inc.*, 395 F.3d 1364, 1370 (Fed. Cir. 2005). As mentioned above, in the '702 patent, the *reception system* 200 can receive and send information over different media (i.e., the "one-way communication process" using satellite broadcast). However, nowhere does the '702 patent describe the *transceiver* to be the component that performs these operations. Acacia cannot identify any portion of the specification that describes the transceiver to send information back to the transmission system over a different media. To the contrary, the specification teaches that when transmitting, the transceiver uses the same medium as when receiving.

Acacia falsely represents to the Court that the '702 patent specification explicitly discloses the transceiver to transmit information to the transmission system. In Acacia's Opposition Brief, Acacia argues, "The specification also **states** that the transceiver *transmits* information – user requests ('702 patent, 13:16-27 and 14:28-51) and confirmation of the receipt of the transmitted information ('702 patent, 16:24-45) – to the transmission system." (Acacia's Opposition Brief at 7) (bold emphasis added). But the cited sections disclose a *user interface,* built into the reception system 200, or the reception system 200 *itself* to send information to the transmission system. There is no mention of a "transceiver" in the sections cited in Acacia's Opposition Brief. Indeed, during the Reconsideration hearing, Acacia conceded that the '702 patent does not disclose the transceiver of the "one-way communication process" as sending information back to the transmission system. (Wong Decl. Ex. 2 at 385).

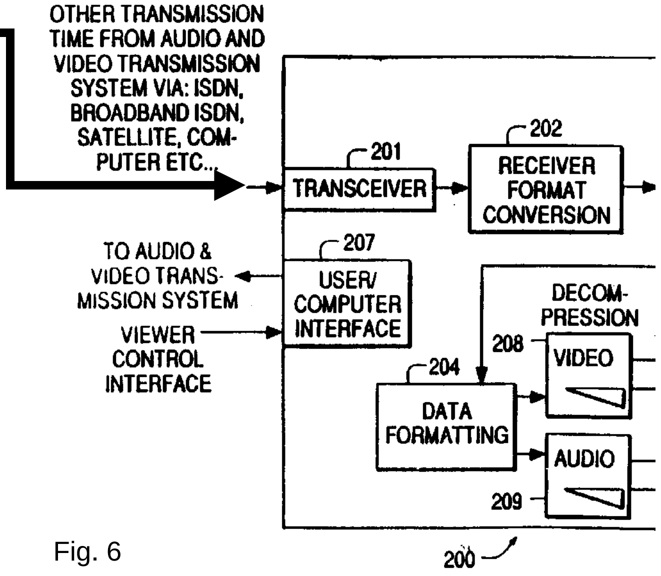
In search of support that simply doesn't exist, Acacia misrepresents paragraph 28 of Dr. Lippman's declaration. (Wong Decl. Ex. 2 at 385-86). Yet Dr. Lippman's declaration at paragraph 28 explains that in the "two-way communication process," a person skilled in the art would understand transceiver 201 of the reception system 200 to send confirmation of reception of the initial data block, i.e., the ongoing confirmation, back to the transmission system over the *same* communication medium.

Reviewing Figures 2b and 6 together makes this point clear. As shown below, in the "two-way communication process," the connection between the transmission system and the reception system is transceiver-to-transceiver. In paragraph 27, Dr. Lippman explains that the bi-directional arrow illustrated with each transceiver in Figure 2b means that the communication is a two-way process over a single communication medium, e.g., ISDN, B-ISDN, LAN, MAN, or telephone. Further with respect to the "two-way communication process," he explains at paragraph 28 that the specification describes the transceiver 201 to be the device that receives the data from the transmission system. Because transceiver 201 is linked with the transceiver 122 of the transmission system, transceiver 201 is the only device that can send ongoing confirmation back to transceiver 122, over the same communication medium. This is logical, and Dr. Lippman concludes this is consistent with the ordinary meaning of the term "transceiver" as understood by the skilled artisan.



COMPRESSED DATA LIBRARY
118
HIGH SPEED NETWORK
119
TRANSMISSION FORMAT CONVERSION CPU
122
TRANS-CEIVER
TO CUSTOMER'S RECEIVING SYSTEM
ISDN
ISDN
ISDN
B ISDN
B ISDN
B ISDN
TRANS-MITTER
SATELLITE
CABLE TV
LAN OR MAN
100
TELEPHONE
TELEPHONE
TELEPHONE
TELEPHONE
1123
LIBRARY SYSTEM CONTROL COMPUTER
121
LIBRARY ACCESS INTER-FACE
OPERATOR OR CUSTOMER ACCESS

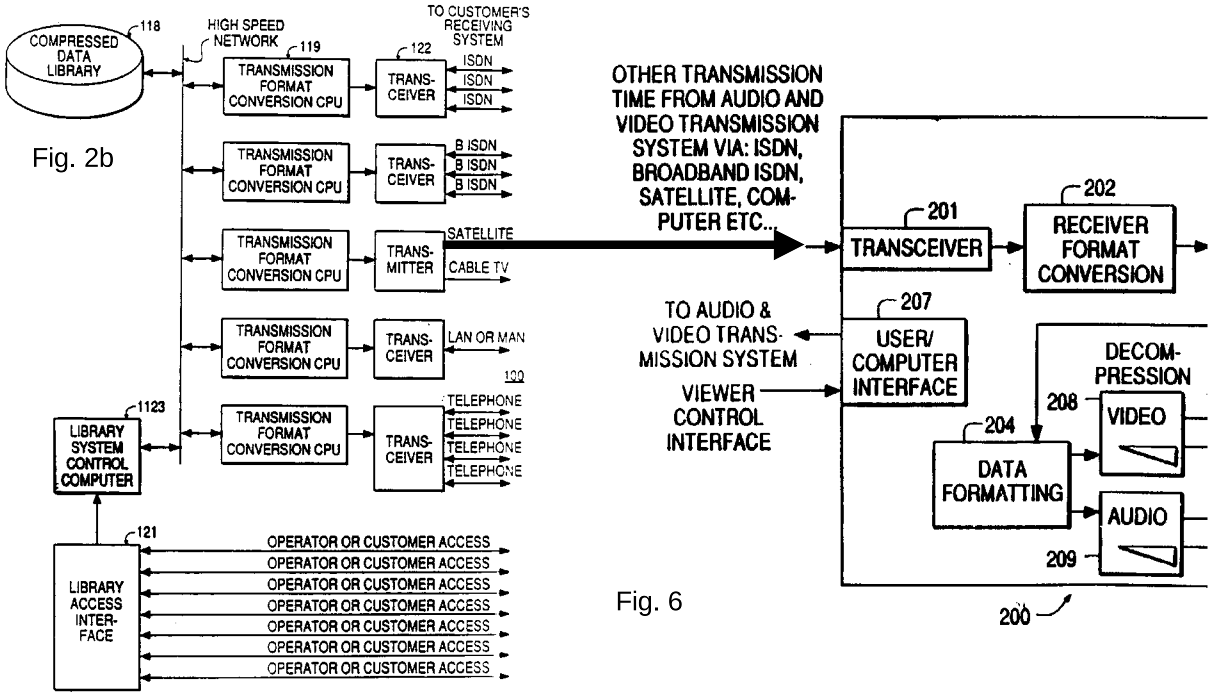
Fig. 2b



OTHER TRANSMISSION TIME FROM AUDIO AND VIDEO TRANSMISSION SYSTEM VIA: ISDN, BROADBAND ISDN, SATELLITE, COM-PUTER ETC...
201
TRANSCEIVER
202
RECEIVER FORMAT CONVERSION
207
TO AUDIO & VIDEO TRANS-MISSION SYSTEM
USER/ COMPUTER INTERFACE
VIEWER CONTROL INTERFACE
DECOM-PRESSION
208
VIDEO
204
DATA FORMATTING
AUDIO
209
200

Fig. 6

The "one-way communication process," on the other hand, is a *transmitter*-to-transceiver connection employing satellite and cable TV broadcast. The transmitter is shown in Figure 2b with a single headed arrow to indicate a single direction transmission. As shown below, in this embodiment, the transceiver 201 in the reception system 200 operates only to receive information. Because the patentees understood that an ongoing confirmation cannot be made in a *transmitter*-to-transceiver embodiment (because the transmitter cannot receive), the '702 patent discloses that after distribution, confirmation of the reception may be achieved via telephone line with the *reception system* – not with the transceiver 201. (*See*, '702 patent, 16:40-45). This is logical as one skilled in the art would understand that a transceiver does not have the capability of receiving and sending over different media.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LIBRARY ACCESS INTER-FACE
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DATA FORMATTING
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209
200

Fig. 2b

Fig. 6

Thus, reception system 200 utilizes a transceiver to accommodate both the two-way and one-way communication processes with a single schematic design. The fact that the transceiver is used in both receive/transmit and receive-only modes does not change its meaning. While the ordinary meaning of "transceiver" as proposed by DIRECTV naturally aligns with and fully supports the one-way and two-way communication embodiments, nothing in the specification supports the claim construction now urged by Acacia.

B. Acacia's Definition Of "Transceiver" Is Unduly Expansive And Divorced From The Ordinary Meaning Of The Term

Acacia's Opposition Brief presents an argument that could not better illustrate the danger inherent in an overly broad construction of "transceiver." At footnote 14, Acacia boldly asserts that the Court's present definition of transceiver could legitimately cover a photocell or a speaker as satisfying the transceiver requirement.

> If, somehow in the future, someone were to be able to design a communication system which meets all of the elements of the '702 patent claims and is capable of transmitting items of information in a computer compatible form using a photocell or an audio speaker as the transceiver of the reception system, then such a system should be covered by the patent claims (either literally or under the

> doctrine of equivalents) and should be deemed an infringing system.

(Acacia's Opposition Brief at 19, n.14).

As Dr. Lippman explains, however, *in unrebutted testimony,* no one skilled in the art would identify a photocell or an audio speaker as a transceiver. (Lippman Transceiver Decl. at ¶ 24) Acacia's flaunting misapplication of this term indicates precisely why the Court's present definition is not complete and should be modified according to DIRECTV's proposed construction.

III. CONCLUSION

For the foregoing reasons, the Court should reconsider its prior construction of the term "transceiver." Based on the context of the specification, the ordinary meaning of the term, and the relevant dictionary definitions, the Court should construe "transceiver" to mean " a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium."

Dated: September 28, 2005

Respectfully submitted,

JONES DAY

By: /s/
Victor G. Savikas

Counsel for Defendant
THE DIRECTV GROUP, INC.